CRL.W.P. No. 888 of 2007

Prehlad Singh vs. State of Haryana and another

Present: Mr.V.K.Jindal, Advocate for
the petitioner.

Mr.Yashwinder Singh, AAG, Haryana.

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The petitioner undergoing life imprisonment, has completed nearly 18 years of total sentence, out of which actual sentence of 14 years R.I, seeks a writ of Habeas Corpus praying that his continued detention is illegal on the ground that his pre-mature release is not being considered in view of policy formulated as a result of which he is being deprived of his liberty without a due process of law.

The petitioner has given details of the period of imprisonment undergone by him which is three years, five months and seven days before conviction as on 31.7.2007. The petitioner claims to have undergone eleven years, seven months and eight days of custody after conviction. His total sentence undergone thus works out to be fifteen years and fifteen days. The petitioner has also earned remission of five years and three months, thus total sentence undergone by him is twenty years, three months and fifteen days. Out of which he was on bail for ten months and fifteen days and was on parole for one year and five months. According to the petitioner, he has thus by now, undergone a total sentence of almost eighteen years.

This factual position is not seriously disputed by the State in a reply filed by Superintendent, District Jail, Gurgaon. According to the reply filed, the petitioner has undergone three years, one

month and seven days period as under trial custody. As per the reply after conviction, custody period of the petitioner is ten years, ten months and fifteen days. Thus the total actual sentence undergone by the petitioner as on 20.9.2007, according to jail record, is thirteen years, eleven months and twenty two days. The petitioner, thus, by now has certainly undergone actual sentence of more than fourteen years.

The objection for release of the petitioner pre-maturely is only on the ground that he has not completed fourteen years of actual sentence. This is being stated by deducting the period of one year, eight months and two days, of parole availed by the petitioner out of the actual sentence undergone by him. The sentence actually undergone by the petitioner is thus stated to be twelve years, three months and twenty eight days.

Mr.Jindal has raised serious objection to the manner of calculating the period of actual sentence undergone by the petitioner. The counsel has justifiably referred to the note in policy instructions issued by the State, annexed as Annexure P-2, in this regard which is as under:-

> “Note:- The period spent on parole will be counted towards the period of actual sentence, but has to be excluded from the total period of sentence, as per judgment of the Hon'ble Punjab and haryana high Court in Criminal Writ Petition No.108/1987 titled as Fakir Singh vs. State of Punjab and another reported in 1988 (1) RCR 558.”

Mr.Jindal is fully justified in submitting that the period

spent on parole is to be counted towards the actual sentence undergone by the petitioner and is to be excluded from the total sentence undergone including the remission earned. This note has been endorsed in the policy instructions on the basis of a judgment of this Court in the case of Fakir Singh vs. State of Punjab and another reported in 1988 (1) RCR 558.

The stand of the State that the petitioner has not undergone actual sentence of fourteen years to dis-entitle him for consideration of pre-mature release cannot be accepted. How can State plead ignorance of its own instructions which are issued on the basis of judgment rendered by this Court. Helpless people are being forced to file unwanted litigation. It is not only a burden on convict who has spent almost his life behind bars, but strain on the already over worked Courts. It also results in wasting the time of the Court which can be better utilised in deciding the pending cases.

Learned State counsel has then drawn my attention to Annexure R-1 to say that as per the observations made by Hon'ble Supreme Court, no convict, serving a like sentence and who has not completed fourteen years, is to be released without the order from the Court. This submission is equally untenable. I fail to understand as to how the observations of the Hon'ble Supreme Court would stand in the way of the State to consider the claim of the petitioner. As already noticed, he has already completed fourteen years of actual sentence. The observations of the Hon'ble Supreme Court even if made would not be attracted in the facts of the present case. That would apply only in those cases where the convict has not undergone actual sentence of fourteen years. That is not the position

in the present case. Even otherwise, Mr.Jindal points out that this observation came to be made in entirely different context where the State was making efforts to release some influential persons who had hardly undergone any substantial sentence out of the life imprisonment awarded to them. State counsel is in no position to show, how these observations would apply in the present case.

The present petition deserves to be allowed and it is accordingly allowed. Direction is hereby issued to the respondent to consider the case of the petitioner for pre-mature release by considering that he has already completed actual sentence of fourteen years. If the case of the petitioner is covered by the policy instructions, the respondent would ensure benefit thereof is made available to the petitioner. These are to be uniformly applied in every case lest it is urged that State is discriminating between the persons, similarly situated. Let the needful be done within a period of one month.

(RANJIT SINGH)
JUDGE

November 29, 2007
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